

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

**THEODORE E. WRIGHT, III AND
SHERRY K. O'NEAL WRIGHT,
HUSBAND AND WIFE, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiffs

Case No. 12-cv-05120-GAF

vs.

**WELLS FARGO BANK, N.A., dba
AMERICA'S SERVICING COMPANY –
AS SERVICING AGENT FOR
DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR
MORGAN STANLEY ABS CAPITAL I,
INC. TRUST 2007-HE2, et al.,**

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANT WELLS FARGO BANK'S
MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT AS
TO WELLS FARGO**

COME NOW, the Plaintiffs Theodore E. Wright, III and Shery K. O'Neal Wright, and through counsel, responds to Defendant Wells Fargo Bank's Motion to Dismiss their First Amended Complaint as to Wells Fargo Bank as follows:

DISCUSSION

Plaintiffs have included Defendant Wells Fargo Bank, N.A. to the extent that such party will be necessary in its role as servicing agent and custodian of the Defendant Trust. Plaintiffs have received multiple notices and correspondence from Wells Fargo Bank relating to the loan in question; and Plaintiffs in good faith believe that discovery will demonstrate that Wells Fargo has intimate knowledge, details, participation in, and documents relating to the Defendant Trust as its servicer and custodian. In short, Plaintiffs in good faith believe that Wells Fargo will be

necessary to obtain complete relief. In the event that the Court determines that Defendant Wells Fargo Bank is not a necessary party to adjudicate the allegations as set forth in Plaintiffs' First Amended Complaint, the Plaintiffs respectfully request that Wells Fargo Bank be dismissed, without prejudice to preserve Plaintiffs' right to seek re-joinder of the party in the event discovery justifies such re-joinder within timelines set forth in the scheduling order in this case.

CONCLUSION

For all of the foregoing reasons, the Defendant's pending motion to dismiss should be overruled; or in the alternative that Wells Fargo Bank be dismissed, without prejudice.

WHEREFORE, the Plaintiffs respectfully pray the Court to enter its Order overruling Defendant's motion to dismiss as to Wells Fargo; or in the alternative that Wells Fargo Bank be dismissed, without prejudice. Plaintiffs further pray for any other relief deemed appropriate by the Court under the circumstances.

Respectfully Submitted,

DOUGLAS, HAUN & HEIDEMANN, P.C.

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By /s/ Donald M. Brown
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing document has been served upon all necessary parties through the ECF filing system contemporaneously with the filing of the same on the 1st day of August, 2013.

By /s/ Donald M. Brown